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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASEY BLOTZER, individually and) Case No. 8:15-cv-01077-JVS-DFM
on behalf of all others similarly situated,))

Plaintiff,)

vs.)

LENDIO, INC.; GREEN TOWN)
VENTURES CORP. dba BUSINESS)
BOUNCE; and DAVID A. BROWN,)

Defendants.)

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff Casey Blotzer ("Plaintiff"), individually and on behalf of all others
similarly situated, alleges the following upon information and belief based upon

1 personal knowledge:

2 **NATURE OF THE CASE**

3 1. Plaintiff brings this action individually and on behalf of all others
4 similarly situated seeking damages and any other available legal or equitable
5 remedies resulting from the illegal actions of LENDIO, INC. (“Defendant
6 Lendio”); GREEN TOWN VENTURES CORP. dba BUSINESS BOUNCE
7 (“Defendant Green Town”); and DAVID A. BROWN (“Defendant Brown”), in
8 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular
9 telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. §
10 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy. Defendant Lendio,
11 Defendant Green Town, and Defendant Brown will be referred to collectively
12 herein as “Defendants.”

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a resident of California, seeks relief on behalf of a Class, which will result in at
16 least one class member belonging to a different state than that of Defendants.
17 Defendant Lendio is a company incorporated in the State of Delaware, and
18 Defendant Green Town is a company incorporated in the State of New York.
19 Defendant Lendio and Defendant Green Town have their principal places of
20 business in the State of New York. Plaintiff also seeks up to \$1,500.00 in
21 damages for each call in violation of the TCPA, which, when aggregated among a
22 proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal
23 court jurisdiction. Therefore, both diversity jurisdiction and the damages
24 threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and
25 this Court has jurisdiction.

26 3. Venue is proper in the United States District Court for the Central
27 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
28 because Defendants do business within the state of California and Plaintiff resides

1 within the County of Orange.

2 **PARTIES**

3 4. Plaintiff is a natural person residing in Buena Park, California and is
4 a “person” as defined by 47 U.S.C. § 153 (10).

5 5. Defendant Lendio is in the business of offering consumers and
6 business owners business loans and is a “person” as defined by 47 U.S.C. § 153
7 (10).

8 6. Defendant Green Town, is an investment management company and
9 is a “person” as defined by 47 U.S.C. § 153 (10).

10 7. Defendant Brown is an individual who at all relevant times is a
11 “person” as defined by 47 U.S.C. § 153 (10). At all relevant times herein,
12 Defendant Brown was a principal for Defendant Green Town. As a principal
13 from Defendant Green Town, Defendant Brown was responsible for the overall
14 success of the company. As the principal of Defendant Green Town, he exercised
15 control over the affairs of the marketing and/or solicitation of Defendant Green
16 Town’s services; and he was regularly engaged, albeit more often indirectly than
17 directly, in the marketing and/or solicitation of Defendant Green Town’s services
18 through his involvement in Defendant Green Town’s affairs. Defendant Brown
19 continued to play a key role in maintaining and expanding Defendant Green
20 Town’s marketing and/or solicitation activities through the time in question.

21 8. Plaintiff is informed and believes thereon that at all relevant times,
22 each and every Defendant was acting as an agent and/or employee of each of the
23 other Defendants and was acting within the course and scope of said agency
24 and/or employment with the full knowledge and consent of each of the other
25 Defendants. Plaintiff is informed and believes that each of the acts and/or
26 omissions complained of herein was made known to, and ratified by, each of the
27 other Defendants.

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FACTUAL ALLEGATIONS

9. Beginning in or around October 3, 2014, at 9:17 a.m., Defendants contacted Plaintiff on her cellular telephone in an attempt to solicit Plaintiff to apply for a loan with Defendants. Defendants contacted or attempted to contact Plaintiff from telephone number (714)271-2884.

10. Defendants used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services. In fact, Plaintiff was instructed to press a number on the keypad to speak to a live representative, who was identified as Anthony.

11. Defendants’ calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

12. Defendants’ calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

13. Defendants utilized an “artificial or prerecorded voice” as defined by 47 U.S.C. § 227(b)(1)(A).

14. During all relevant times, Defendants did not possess Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

15. Defendants Brown and Shah, as principals for Defendant Green Town, are directly liable for Defendant Green Town’s actions.

CLASS ALLEGATIONS

16. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from

1 Defendants to said person's cellular telephone made
2 through the use of any automatic telephone dialing
3 system or an artificial or prerecorded voice and such
4 person had not previously consented to receiving such
5 calls within the four years prior to the filing of this
6 Complaint

7 17. Plaintiff represents, and is a member of, The Class, consisting of All
8 persons within the United States who received any collection telephone calls from
9 Defendants to said person's cellular telephone made through the use of any
10 automatic telephone dialing system or an artificial or prerecorded voice and such
11 person had not previously not provided their cellular telephone number to
12 Defendants within the four years prior to the filing of this Complaint.

13 18. Defendants, their employees and agents are excluded from The
14 Class. Plaintiff does not know the number of members in The Class, but believes
15 the Class members number in the thousands, if not more. Thus, this matter
16 should be certified as a Class Action to assist in the expeditious litigation of the
17 matter.

18 19. The Class is so numerous that the individual joinder of all of its
19 members is impractical. While the exact number and identities of The Class
20 members are unknown to Plaintiff at this time and can only be ascertained
21 through appropriate discovery, Plaintiff is informed and believes and thereon
22 alleges that The Class includes thousands of members. Plaintiff alleges that The
23 Class members may be ascertained by the records maintained by Defendants.

24 20. Plaintiff and members of The Class were harmed by the acts of
25 Defendants in at least the following ways: Defendants illegally contacted Plaintiff
26 and Class members via their cellular telephones thereby causing Plaintiff and
27 Class members to incur certain charges or reduced telephone time for which
28 Plaintiff and Class members had previously paid by having to retrieve or
administer messages left by Defendants during those illegal calls, and invading

1 the privacy of said Plaintiff and Class members.

2 21. Common questions of fact and law exist as to all members of The
3 Class which predominate over any questions affecting only individual members
4 of The Class. These common legal and factual questions, which do not vary
5 between Class members, and which may be determined without reference to the
6 individual circumstances of any Class members, include, but are not limited to,
7 the following:

- 8 a. Whether, within the four years prior to the filing of this
9 Complaint, Defendants made any telemarketing/solicitation
10 call (other than a call made for emergency purposes or made
11 with the prior express consent of the called party) to a Class
12 member using any automatic telephone dialing system or any
13 artificial or prerecorded voice to any telephone number
14 assigned to a cellular telephone service;
- 15 b. Whether Plaintiff and the Class members were damages
16 thereby, and the extent of damages for such violation; and
- 17 c. Whether Defendants should be enjoined from engaging in
18 such conduct in the future.

19 22. As a person that received numerous telemarketing/solicitation calls
20 from Defendants using an automatic telephone dialing system or an artificial or
21 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
22 claims that are typical of The Class.

23 23. Plaintiff will fairly and adequately protect the interests of the
24 members of The Class. Plaintiff has retained attorneys experienced in the
25 prosecution of class actions.

26 24. A class action is superior to other available methods of fair and
27 efficient adjudication of this controversy, since individual litigation of the claims
28 of all Class members is impracticable. Even if every Class member could afford

individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

25. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

26. Defendants have acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

27. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-26.

28. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

29. As a result of Defendants' negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. §*

1 227(b)(3)(B).

2 30. Plaintiff and the Class members are also entitled to and seek
3 injunctive relief prohibiting such conduct in the future.

4 **SECOND CAUSE OF ACTION**

5 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
6 **Act**

7 **47 U.S.C. §227 et seq.**

8 31. Plaintiff repeats and incorporates by reference into this cause of
9 action the allegations set forth above at Paragraphs 1-30.

10 32. The foregoing acts and omissions of Defendants constitute
11 numerous and multiple knowing and/or willful violations of the TCPA, including
12 but not limited to each and every one of the above cited provisions of *47 U.S.C.*
13 *§ 227 et seq.*

14 33. As a result of Defendants' knowing and/or willful violations of *47*
15 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
16 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
17 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

18 34. Plaintiff and the Class members are also entitled to and seek
19 injunctive relief prohibiting such conduct in the future.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff requests judgment against Defendants for the following:

22 **FIRST CAUSE OF ACTION**

23 **Negligent Violations of the Telephone Consumer Protection Act**

24 **47 U.S.C. §227 et seq.**

- 25 • As a result of Defendants' negligent violations of *47 U.S.C.*
26 *§227(b)(1)*, Plaintiff and the Class members are entitled to and
27 request \$500 in statutory damages, for each and every violation,
28 pursuant to *47 U.S.C. 227(b)(3)(B)*.

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 8th Day of September, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff